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HAROLD E. WILLEY, Cl

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1955

No. 859

HARRY SEARS, Trustee, and NEVADA INVESTMENT AND FINANCE CORPORATION, a Corporation,

Appellants,

vs.

COUNTY OF CALAVERAS, STATE OF CALIFORNIA, GEORGE G. BRADDOCK, A. J. GIANELLI, MARVIN L. WATERS, CLAUDE T. SMITH, FRANK A. CRESPI, FRANK LANGFORD and BOARD OF SUPERVISORS OF CALAVERAS COUNTY,

Respondents.

On Appeal from the Supreme Court of the State of California.

JURISDICTIONAL STATEMENT.

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2140 Shattuck Avenue, Berkeley 4, California,
Attorney for Appellants.

FRANCIS T. CORNISH,
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Of Counsel.

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No.

HARRY SEARS, Trustee, and NEVADA INVESTMENT AND FINANCE CORPORATION, a Corporation,

Appellants,

vs.

COUNTY OF CALAVERAS, STATE OF CALIFORNIA, GEORGE G. BRADDOCK, A. J. GIANELLI, MARVIN L. WATERS, CLAUDE T. SMITH, FRANK A. CRESPI, FRANK LANGFORD and BOARD OF SUPERVISORS OF CALAVERAS COUNTY,

Respondents.

On Appeal from the Supreme Court of the State of California.

JURISDICTIONAL STATEMENT.

To the Honorable Earl Warren, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:

Pursuant to paragraph 2 of Rule 13 of the Rules of the Supreme Court of the United States, appellants

file this statement to show the basis of appellants' contention that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment from which this appeal is taken.

(a) OPINIONS DELIVERED BY COURTS BELOW.

The decision of the California Supreme Court from which this appeal is taken is a written opinion not yet officially reported. It may be found in 45 Advance California Reports, page 545, and 289 Pacific Reporter, 2nd Series, page 425. A copy of that opinion is appended hereto as Appendix 1.

(b) GROUNDS ON WHICH JURISDICTION INVOKED.

(i) The proceeding is a suit to quiet title to real property which the State of California and the County of Calaveras claim adversely as a result of enforcement of tax liens. It is contended that the liens are void. The right to remove such clouds is inherent. Section 1 of the Fourteenth Amendment of the United States Constitution provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person*

> of life, liberty, or *property, without due process of law;* nor deny to any person within its jurisdiction the equal protection of the laws.

The right to sue the State of California for taking or damaging private property without paying compensation has been held by California Courts to be inherent.

California Constitution, Article I, Section 13 provides in part

> "* * * No person shall * * * be deprived of * * * property without due process of law * * *"

California Constitution, Article I, Section 14 provides in part

> "Private property shall not be taken or damaged for public use without just compensation having first been made to, or paid into court for, the owner, * * *"

For violation of these provisions no special statute authorizing suit is necessary.

Collier v. Merced Irrigation District (1931), 213 Cal. 554, 2 P. (2d) 790;

Clement v. State Reclamation Board (1950), 35 Cal. (2d) 628, 220 P. (2d) 897.

(ii) The judgment sought to be reviewed is the decision of the California Supreme Court, affirming the judgment of the Superior Court of the State of California, in and for the County of Calaveras which dismissed the complaint. The decision was rendered November 15, 1955. A rehearing was requested and it was denied December 14, 1955. This

made the judgment final and started the 90 day period for filing an appeal to this Court (*Market Street Railway Co. v. Railroad Commission of California* (1945), 324 U.S. 548, 550-552, 65 S. Ct. 770, 89 L. Ed. 1171, 1176-1177). Notice of Appeal was filed with the Clerk of the Supreme Court of the State of California of February 21st, 1956.

(iii) The statutory provision believed to confer jurisdiction of the appeal upon this Court is: Section 1257(2) of Title 28 of the United States Code, Stats. June 25, 1948, c. 646, § 1, 62 Stat. 929.

(iv) The cases believed to sustain the jurisdiction are the following:

Where a state Court entertained the question as to whether a state statute was repugnant to the United States Constitution and held that such statute was not repugnant and that it was valid, the United States Supreme Court has jurisdiction to review the decision of the state Court.

People of the State of New York ex rel. Bryant v. Zimmerman (1928), 278 U.S. 63, 49 Sup. Ct. 61, 73 L. Ed. 184;

Green Bay & M. Canal Co. v. Patten Paper Co. (1899), 172 U.S. 58, 19 Sup. Ct. 97, 43 L. Ed. 364;

St. Louis I.M. & S.R. Co. v. Starbird (1917), 243 U.S. 592, 37 Sup. Ct. 462, 61 L. Ed. 917;

Whitney v. California (1927), 274 U.S. 357, 47 Sup. Ct. 641, 71 L. Ed. 1095.

The Supreme Court of the United States has jurisdiction on appeal to determine whether a statute,

not invalid on its face, is applied so as to transgress the Federal Constitution.

Fallbrook Irrigation District v. Bradley (1896), 164 U.S. 112, 17 Sup. Ct. 56, 41 L. Ed. 369;

Iregea v. Modesto Irrigation District (1896), 164 U.S. 179, 17 Sup. Ct. 52, 41 L. Ed. 395;

Dahnke-Walker Milling Company v. Bondurant (1921), 257 U.S. 282, 42 Sup. Ct. 106, 66 L. Ed. 239;

Fiske v. Kansas (1927), 274 U.S. 380, 47 Sup. Ct. 655, 71 L. Ed. 1108.

As frequently as the point has been presented to the highest state Courts they have uniformly decided that a statute of limitations cannot bar an owner in possession quieting his title against claims asserted by one out of possession, because to convert ownership into a mere right of action would deprive the owner of his property without due process of law. These decisions are:

Murrison v. Fenstermacher (1949), 166 Kan. 568, 203 P. (2d) 160, 7 A.L.R. (2d) 1360;

Long v. Boast (1907), 153 Ala. 428, 44 So. 955;

People ex rel. Deneen v. Simon (1898), 176 Ill. 165, 52 N.E. 910, 44 L.R.A. 801, 68 Am. St. Rep. 175;

Bradshaw v. Brady (1920), 43 S.D. 24, 177 N.W. 366;

Leavenworth v. Claughton (1944), 197 Miss. 606, 19 So. (2d) 815;

Dingey v. Paxton (1883), 60 Miss. 1038;

Johnston v. Ellsworth Trust Co. (1912), 63 Fla. 443, 58 So. 249;

Buty v. Goldfinch (1913), 74 Wash. 532, 133 Pac. 1057, 46 L.R.A. (N.S.) 1065, Ann. Cas. 1915A 604;

Taylor v. Miles (1870), 5 Kan. 498, 7 Am. Rep. 558;

Pinkham v. Pinkham (1900), 60 Nev. 600, 83 N.W. 837, Reh. 61 Neb. 336, 85 N.W. 285;

Robinson v. Glass (1884), 94 Ind. 211;

Mott v. Fiske (1900), 155 Ind. 597, 58 N.E. 1053;

Groesbeck v. Seeley (1865), 13 Mich. 329;

Baker v. Kelley (1866), 11 Minn. 480, Gil. 358;

Whitney v. Wegler (1893), 54 Minn. 235, 55 N.W. 927;

Case v. Dean (1867), 16 Mich. 12;

Charbonnet v. State Realty Co. (1923), 155 La. 1044, 99 So. 865.

In *Leffingwell v. Warren* (1862), 2 Black 599, 17 L. Ed. 261, this Court followed a contrary interpretation the Wisconsin Supreme Court in *Hill v. Kricke* (1860), 11 Wis. 442, placed on a statute of limitations of Wisconsin. That case was decided six years before the adoption of the Fourteenth Amendment to the United States Constitution. This Court has not been called upon to decide the question since, probably because no state Court has upheld a statute of limitations which precludes the owner in possession bringing an action to quiet his title.

(v) Validity of state statutes is involved. These statutes are Sections of the Revenue and Taxation Code of the State of California.

Section 175 of the Revenue and Taxation Code of the State of California provides:

> *"Tax deeds: Presumptions where action not commenced in year: Manner of prosecution.* All deeds heretofore and hereafter issued to the State of California or to any taxing agency, including taxing agencies which have their own system for the levying and collection of taxes, by reason of delinquency of property taxes or assessments levied by any taxing agency or revenue district, shall be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding in a court of competent jurisdiction to determine the validity of said deed commenced within one year after the execution of said deed, or within one year after the effective date of this section, whichever be later. Such proceedings may be prosecuted within the time limits above specified in the manner and subject to the provisions of Section 3618 of this code."

It is Section 1 of Chapter 1017 of California Statutes of 1945, page 1963. It may be found at page 31 of Volume 1 of Deering's Revenue and Taxation Code of California.

Section 3521 of the Revenue and Taxation Code of the State of California, provides:

> *"Proceedings to invalidate deed: Time for commencement: Application of Code Civ. Proc., §§351-358.* A proceeding based on an alleged invalidity or irregularity of any deed to the state for taxes or of any proceedings leading up to the deed can only be commenced within one year after the date of recording of the deed to the

state in the county recorder's office or within one year after June 1, 1941, whichever is later.

Sections 351 and 358, inclusive, of the Code of Civil Procedure do not apply to the time within which a proceeding may be brought under the provisions of this section."

This is Section 8 of Chapter 290 of California Statutes of 1941, page 1426, and may also be found on page 208 of Volume 1 of Deering's Revenue and Taxation Code of California.

(c) THE QUESTIONS PRESENTED BY THE APPEAL.

The question presented is whether the Fourteenth Amendment to the United States Constitution will permit these statutes to be applied to deprive an owner, whose actual physical possession of real property has never been disturbed, of the right to quiet his title against void tax liens asserted by taxing agencies of the State. Appellant contends that the application of a statute of limitations to divest an owner of his property, although his actual physical possession has never been disturbed, is an unconstitutional taking.

(d) STATEMENT OF THE CASE.

Calaveras Central Mining Corporation owned several mining claims in Calaveras County, California. These claims were separately assessed. County taxes were levied and assessed against the properties separately during the fiscal year 1935-36. Upon default

in the payment of those taxes Calaveras County sold all of the parcels to the State of California as one single unit for the combined taxes levied against all. California law required that each be sold for the tax levied against it and no more. The California Courts have consistently condemned as void a sale made as this one was.

Brady v. Kelly (1877), 52 Cal. 371;
Knox v. Higby (1888), 76 Cal. 264, 18 Pac. 381;
Gillis v. Cleveland (1890), 87 Cal. 214, 218, 25 Pac. 351;
Stege v. City of Richmond (1924), 194 Cal. 305, 317, 228 Pac. 461, (Error Dismissed) 273 U.S. 648, 47 S. Ct. 245, 71 L. Ed. 821;
Gottstein v. Kelly (1929), 206 Cal. 742, 276 Pac. 347.

After this sale John DeLancey purchased the claims at a sale foreclosing an encumbrance which was against the property when the tax sale occurred. He immediately declared himself to hold in trust for beneficiaries, including Calaveras Central Gold Mining Company, Ltd., which was then in possession and has remained in uninterrupted actual physical possession ever since. Appellants, as trustees, are successors to DeLancey, who is deceased. The California Courts hold this intervening title prevents the defective tax sale proceedings from being corrected by subsequently enacted curative acts.

Miller v. McKenna (1944), 23 Cal. (2d) 774, 147 P. (2d) 531;
Hall v. Chamberlain (1948), 31 Cal. (2d) 673, 192 P. (2d) 759.

On July 1, 1943 a deed was made to the State. It was based only upon the void sale to the State. The State of California claims that by virtue of that deed it became, and ever since has been, the owner of the mining claims. Appellants claim that the California Courts having declared a tax sale so conducted to be wholly void no title passed to the State, and as owners in possession appellants are entitled to have their property declared free and clear of any cloud created by the void sale and tax deed to the State of California, and no statute of limitations can bar that right as long as their possession has never been disturbed.

This issue was raised by the complaint which alleged ownership (Clerk's Transcript, p. 1, line 26-p. 2, line 7), the void sale (Clerk's Transcript, p. 6, lines 9-26), and continuous possession (Clerk's Transcript p. 9, line 18-p. 10, line 4.) The respondents demurred that the complaint shows on its face that more than one year had elapsed since the deed to the State. (Clerk's Transcript, paragraphs III and IV, page 33, paragraph VII, page 38, paragraph VIII, page 39.)

The Court sustained the demurrer without leave to amend (Clerk's Transcript, page 45.) Following that order judgment was rendered. (Clerk's Transcript, pages 46-47.) A copy of the Judgment of Dismissal is appended hereto, as Appendix 2.

The point which this Court is asked to pass was raised by appellants on appeal in their opening brief, pages 26-29. The point was presented to the Supreme

Court of the State of California in the Petition for Hearing (pages 21-28), in Appellants' Supplemental Brief (pages 18-19), and in the Petition for Rehearing by the Supreme Court (pages 12-14.)

(e) THE FEDERAL QUESTION INVOLVED IS SUBSTANTIAL.

The power to tax is the life blood of government. Frequent irregularities in taxing processes have invalidated large portions of assessment rolls and many tax sales. Curative acts have been passed in an effort to correct some of these mistakes. Statutory rules of evidence create presumptions in favor of validity of tax proceedings. Nevertheless it has been uniform practice of title companies to require a judicial decree quieting title in order to divest the assessee of his ownership.

The right to own and enjoy property, and to have that right protected against unlawful invasion, is the cornerstone of our social and economic system. It works no hardship against a government, in the exercise of its power to tax, that it be required to follow lawful procedures, and avoid those proceedings which our Courts have declared to be void. An owner of property who is not disturbed in its enjoyment, should not be required at his peril to vigilantly search tax records and take affirmative action to invalidate proceedings at the peril of being divested of ownership by void proceedings should he fail to do so.

If followed, the decision of the California Supreme Court applying a statute of limitations against an owner in possession would enable every State to validate void tax proceedings by mere lapse of time, and deny the undisturbed owner a hearing to defend his good title. The example this decision sets for the other forty-seven States to validate their totally void tax proceedings against owners in undisturbed possession by statutes of limitations raises a Federal question which is so substantial this Court should consider it.

The question should be given plenary consideration, and this Court should receive briefs on the merits and oral argument for its resolution.

Dated, Berkeley, California,
April 4, 1956.

Respectfully submitted,
CHARLES O. BRUCE,
Attorney for Appellants.

FRANCIS T. CORNISH,
Of Counsel.

(Appendices 1 and 2 Follow.)

Appendix 1

In the Supreme Court of the State of California

In Bank

Sac. No. 6332

HARRY SEARS, Trustee, and NEVADA INVESTMENT AND FINANCE CORPORATION, a Corporation,
Plaintiffs and Appellants,
vs.
COUNTY OF CALAVERAS, STATE OF CALIFORNIA, GEORGE G. BRADDOCK, A. J. GIANELLI, MARVIN L. WATERS, FRANK A. CRESPI, CLAUDE T. SMITH, FRANK LANGFORD and BOARD OF SUPERVISORS OF CALAVERAS COUNTY,
Defendants and Respondents.

This is an appeal from a judgment for the defendants following an order sustaining their demurrers without leave to amend.

The main purpose of the action is to have it declared that a deed issued to the State of California for delinquent ad valorem taxes for the fiscal year 1935-1936 is invalid. The real property consists of patented mining claims on four parcels of land and the minerals underlying another parcel.

It is alleged that the Calaveras Central Mining Corporation was the owner of the property on and prior to the first Monday in March, 1935; that on November 20, 1928, the corporation conveyed the property to one K. W. Cannon, as trustee, under a deed of trust recorded on December 4, 1928, for the benefit of one Helen Roesch in order to secure payment of money loaned to the corporation; that by virtue of that instrument Cannon was empowered to sell the property to satisfy the corporation's obligation to Roesch in the event of default, and that on February 9, 1938, the then trustee, Frank A. Trachsler sold the real property and improvements to one John S. DeLancey, who thereupon became the owner thereof and declared himself, prior to August 8, 1940, to hold the property in trust under the terms of a judgment of the Calaveras County Superior Court. The plaintiff Sears derives his title through John S. DeLancey as trustee by substitution effected on September 23, 1944, after the death of DeLancey. The interest of the plaintiff Nevada Investment and Finance Corporation stems from its purchase, as trustee, of all the placer gold in place in the five parcels of property from Sears on October 10, 1944.

It is further alleged that the Assessor of Calaveras County assessed these five parcels of real property separately for the year 1935-1936 and that the total ad valorem taxes levied for that year amounted to $750.50. The taxes were not paid and the property was sold to the state on June 29, 1936. There was no redemption. On July 2, 1943, the Assessor executed and recorded a deed to the state. It is alleged and therefore an admitted fact that the plaintiffs

were in the exclusive and undisputed possession of the property during all of the times involved.

The plaintiffs seek the annulment of the tax deed on the ground that the tax proceedings supporting the right of the county to deed the property to the state and the deed itself were invalid. They assert that the tax levied against the property exceeded the lawful rate levied generally in the county for 1935-1936; that the purchase price for which the property was sold to the state exceeded the legal amount, and that the separate parcels were improperly sold and deeded to the state as a single unit.

The defendants interposed demurrers alleging that the action is barred by the limitations contained in sections 175 and 3521 of the Revenue and Taxation Code. Section 175, enacted in 1945, provides that "All deeds heretofore and hereafter issued to the State of California . . . by reason of delinquency of property taxes or assessments levied by any taxing agency or revenue district, shall be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding in a Court of competent jurisdiction to determine the validity of said deed commenced within one year after the execution of said deed, or within one year after the effective date of this section, whichever be later." Section 3521 provides that "A proceeding based on an alleged invalidity or irregularity of any deed to the state for taxes or of any proceedings leading up to the deed can only be commenced within one year after the date of recording of the deed to the state in the county recorder's office or within one year after June 1, 1941, whichever is later." Both of these sections are stat-

utes of limitation. (People v. Chambers, 37 Cal. 2d 552; McCaslin v. Hamblen, 37 Cal. 2d 196; Tannhauser v. Adams, 31 Cal. 2d 169; Sheeter v. Lifur, 113 Cal. App. 2d 729.) The defendants argue that the action is barred because the plaintiffs filed their complaint in 1948, more than one year after the enactment of section 175 and more than one year after the tax deed was executed and recorded. It is obvious that if these sections are applicable the plaintiffs are precluded from asserting the invalidity of the tax deed in this action. The plaintiffs contend, however, that the sections do not foreclose an owner in exclusive and undisputed possession of the taxed property from attacking the asserted validity of the deed. The contention is based upon implications which they draw from the opinions of this Court in Tannhauser v. Adams, supra, 31 Cal. 2d 169, and McCaslin v. Hamblen, 37 Cal. 2d 196.

The contention that a statute limiting the time for the commencement of an action to set aside a deed to the state for delinquent taxes does not apply to an owner in exclusive and undisputed possession of the property taxed, is largely based on a rule stated to be that a general statute of limitations does not run against such an owner to remove a cloud upon his title. It may be assumed that such is the general rule. (See Maguire v. Hibernia S. & L. Soc., 23 Cal. 2d 719; Newport v. Hatton, 195 Cal. 132; Secret Valley Land Co. v. Perry, 187 Cal. 420; S.F. Unified School District v. City & County of San Francisco, 54 Cal. App. 2d 105; Crane v. French, 39 Cal. App. 2d 642; Faria v. Bettencourt, 100 Cal. App. 49, 51-52.)

But the general rule does not apply as against a special statute of limitation foreclosing the commencement of an action to set aside a deed to the state for delinquent taxes beyond one year from and after the recording of the deed to the state. Here the facts stated as constituting the alleged defects in the deed all occurred prior to the execution and recordation of the deed. None of the alleged defects in the deed were jurisdictional in the sense that the curative act of 1943 (Stats., 1943, page 1993) would not apply; nor is the deed claimed to be void on its face. If the contention of the plaintiffs should prevail the finality of tax proceedings would be thrown into confusion. The validity of tax deeds as against an owner in possession of real property would be placed in suspension for an indefinite period and until at his election he chose to attack it. Without limit of time he could defend against it. There appears to be no reason why an owner of land, although in exclusive and undisputed possession, should not be required to be alert to protect his rights as against his own delinquency in the payment of taxes. He is charged with notice that if he claims the invalidity of a tax deed to the state or of the proceedings leading up to it he must bring his action for that purpose within the statutory time.

The improper creation of the tax lien and recordation of the deed to the state do more than merely give rise to a permissible cause of action in favor of the land owner. They also start the running of the special statute of limitations applicable to such an owner. If he does not move to protect his rights as

against the tax by payment, redemption, or timely and successful attack upon the tax deed or the proceedings leading up to it, he is divested of his title. After the statutory period has run the tax deed transfers the title by operation of law from the owner of the property to the state the same in effect as a voluntary grant.

It is contended by the plaintiffs that this Court, at least by implication, has ruled otherwise or recognized a contrary rule in Tannhauser v. Adams, supra, 31 Cal. 2d 169. It was said in that case, at page 176: "Regardless of what may be the law under other circumstances, it appears to us that there is no sound reason why the right of one out of possession to attack a tax title for the defect here relied upon, whether it be considered jurisdictional or otherwise, should not be barred if his action is not instituted within the prescribed statutory period, provided that such period is a reasonable one."

It is not claimed that this Court or any Court of this state has directly and finally decided that sections 175 and 3521 of the Revenue and Taxation Code do not apply to an owner in possession. Nor is it contended that any case decided in this state directly involved the point. But it is contended that by indirection the Courts of the state have approved the rule contended for by the plaintiffs. It is true as stated by them that what was said in the cases in this state on the subject was obiter. The plaintiffs say that "In McCaslin v. Hamblen, 37 Cal. 2d 196, the dictum in Tannhauser v. Adams was approved, the Court saying: 'Assuming that the rule might have application in a case where the plaintiff is the original tax-

delinquent owner in undisturbed possession, it would seem right to conclude that a generalization applicable merely to "owners in possession" is too broad.' " (See Elbert, Ltd. v. Gross, 41 Cal. 2d 322.) Such an expression is not to be taken as the announcement of a rule that an owner in possession of real property is not bound by a valid statute of limitations with reference to tax-delinquent proceedings, the same as an owner not in possession. There is no contention that it is not within the power of the state, through its legislature, to provide for such statutes of limitations as those now before us. As applied to the facts in this case there can be no question of their validity and proper application. This necessarily includes the proceedings leading up to the issuance of the tax deed, such as the alleged fraudulent and otherwise overvaluation of the land, the excessive tax rate and sale price, and the sale in block instead of in parcels.

It is concluded that the plaintiffs are barred by statute from attacking the tax deed and all proceedings prior to its issuance and recordation. Since the state's title to the property has not been successfully attacked, the plaintiffs asserted objections to the assessments made after the execution and delivery of the deeds are futile.

The judgment is affirmed.

Shenk, J.

We concur: Gibson, C. J. Edmonds, J., Carter, J., Traynor, J., Schauer, J., Spence, J.

Filed, November 15, 1955,
William I. Sullivan, Clerk.

Appendix 2

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Defendants and Respondents.

JUDGMENT

In the above entitled action defendants County of Calaveras, George G. Braddock, A. J. Gianelli, Marvin L. Waters, Claude T. Smith, Frank A. Crespi,

Frank Langford, and Board of Supervisors of Calaveras County, by their attorney, Virgil M. Ariola, District Attorney of the County of Calaveras, having appeared and demurred to the plaintiffs' third amended complaint herein, and defendant State of California, by its attorneys, Fred N. Howser, Attorney General of the State of California, James E. Sabine, Deputy Attorney General, and Irving H. Perluss, Deputy Attorney General, having also appeared and demurred to the plaintiffs' complaint herein, and the issue of law thereto arising having been duly submitted to the Court by the parties, and the Court being fully advised in the premises, did, on the 30th day of December, 1950, sustain said demurrers and refused leave to plaintiffs to amend their third amended complaint;

Now, Therefore, it is ordered, adjudged and decreed that plaintiffs take nothing by their action, and that said defendants have and recover their costs herein, taxed at $.....

Dated this 6th day of January, 1951.

Ralph McGee,
Judge of the Superior Court.

(Endorsed) Filed Jan. 8, 1951,
John Squellati, County Clerk.